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UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NATIONAL WILDLIFE FEDERATION,  
  
Plaintiff,  
  
vs.  
  
FEDERAL EMERGENCY  
MANAGEMENT AGENCY,  
  
Defendant.

NO. 2:11-cv-02044-RSM  
  
ORDER GRANTING CITIES'  
MOTION TO INTERVENE &  
MOTION FOR EXTENSION OF  
TIME

**I. INTRODUCTION**

This matter comes before the Court on the Motion to Intervene (Dkt. No. 24) and Motion for Extension of Time (Dkt. No. 26) filed by the Cities of Arlington, Auburn, Burlington, Everett, Federal Way, Kent, Lake Forest Park, Mount Vernon, North Bend,

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1 Orting, Port Angeles, Puyallup, Renton, Snoqualmie, Sultan, and Tukwila (“the Cities”). For  
2 the reasons set forth below, both motions are GRANTED.

## 3 **II. DISCUSSION**

### 4 **A. Motion to Intervene**

5 Fed. R. Civ. P. 24(a)(2) provides that, “[o]n timely motion, the court must permit  
6 anyone to intervene who ... claims an interest relating to the property or transaction that is  
7 the subject of the action, and is so situated that disposing of the action may as a practical  
8 matter impair or impede the movant’s ability to protect its interest, unless existing parties  
9 adequately represent that interest.” Rule 24 is to be broadly construed in favor of  
10 intervention. *See Washington State Building & Construction Trades Council v. Spellman*,  
11 684 F.2d 627, 630 (9th Cir. 1982) (“Rule 24 traditionally has received a liberal construction  
12 in favor of applicants for intervention.”) (internal citation omitted). Here, the Cities would  
13 likely be adversely affected by the Plaintiff’s requested ban on new floodplain development  
14 and could potentially become exposed to litigation if such a ban were imposed. Plaintiff does  
15 not oppose the Cities’ motion to intervene. *See* Dkt. No. 27, p. 1. Accordingly, the Cities’  
16 Motion to Intervene (Dkt. No. 24) is GRANTED, and the Cities may intervene as a matter of  
17 right pursuant to FRCP 24(a)(2).  
18

### 19 **B. Motion for Extension of Time and to File Overlength Brief**

20 The Cities also request a 28-day extension to respond to Plaintiff’s motion for a  
21 preliminary injunction. Plaintiff asks the Court to deny the request for an extension, arguing  
22 that the Cities offer no persuasive reasons for their delay in seeking to intervene and cannot  
23 justify the prejudice to NWF’s interests that such a delay would cause. The Court disagrees.  
24

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1 Pursuant to Fed. R. Civ. P. 6(b)(1)(B), “[w]hen an act may or must be done within  
2 a specified time, the court may, for good cause, extend the time . . . on motion made after the  
3 time has expired if the party failed to act because of excusable neglect.” Here, the Cities  
4 have shown good cause to extend the time for the Cities to respond to Plaintiff’s motion and  
5 their failure to do so earlier is not the result of inexcusable neglect. First, as the Cities are not  
6 parties to this action, the Cities were not served with the complaint or the motion for a  
7 preliminary injunction. Second, since the complaint and the preliminary injunction motion  
8 were filed during the holiday season, the Cities had already concluded their annual meeting  
9 schedules. *See* Dkt. No. 25, ¶16. Newly-elected councilmembers and mayors had not yet  
10 been sworn or seated. *Id.* As a result, the constraints associated with governmental decision-  
11 making were amplified by the holiday break, the need to swear in new members of  
12 government, and coordinate among the other cities, which in turn were all experiencing  
13 similar constraints. Finally, during the week that the Defendants’ response was due, a snow  
14 and ice storm hit the Puget Sound region, resulting in wide-spread power outages, which  
15 substantially affected the Cities’ ability to coordinate schedules and use computers to  
16 complete the pleadings. *Id.* at ¶ 17.

18 Plaintiff argues that the above evidence is insufficient to excuse the Cities’ delay  
19 because of the publicity surrounding this litigation. For example, Plaintiff points to the 60-  
20 day notice of intent to sue filed in September of 2011 and the fact that its filing of the  
21 complaint was covered on the front page of the Seattle Times. Moreover, Plaintiff argues  
22 that any delay in the preliminary injunction briefing schedule will increase the risk of  
23 irreparable harm to the protected species that this lawsuit is aimed at protecting. While there  
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1 is some merit to Plaintiff's argument, the Court finds that, on balance, the Cities' interests in  
2 participating in this litigation outweigh the prejudice that the Plaintiff might suffer by a slight  
3 delay in the briefing schedule. The Court finds that the Cities' failure to seek intervention  
4 earlier is excused by the circumstances cited above. Moreover, the Cities' one-month delay  
5 in seeking intervention was relatively short and oral argument has yet to be scheduled in this  
6 matter. The extension of time will be GRANTED. The Cities' request to file an overlength  
7 brief of 40 pages in accordance with those of the other parties to this litigation is also  
8 granted.

9 Having reviewed the parties' briefs and accompanying declarations and exhibits, and  
10 the pleadings and files in this matter, the Court finds and ORDERS:

11 (1) The Cities' motion to intervene (Dkt. No. 24) is GRANTED.

12 (2) The Cities' motion for an extension of time and to file an overlength brief  
13 (Dkt . No. 26) is GRANTED. The Cities shall have until February 23, 2012 to file  
14 said brief, which shall not exceed 40 pages. Plaintiff may file a supplemental reply  
15 brief, if necessary, by March 2, 2012.

16 (3) The Clerk of the Court is directed to forward a copy of this order to all  
17 counsel of record.

18 Dated this 9<sup>th</sup> day of February 2012.

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23 RICARDO S. MARTINEZ  
24 UNITED STATES DISTRICT JUDGE

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